

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 01-0327 ST
SALES AND USE TAX
For Tax Periods: 1998 Through 2000**

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Issue

Sales and Use Tax- Water Filtration and Distribution Systems

Authority: IC 6-2.5-2-1, IC 6-2.5-4-1, IC 6-2.5-3-2, 45 IAC 2.2-4-2, Sales Tax Information Bulletin #26 April 4, 1983.

Taxpayer protests the assessment of tax on its water filtration and distribution systems.

Statement of Facts

The taxpayer provides water treatment and dispensing equipment to various retail outlets throughout the midwest. The taxpayer approaches retail establishments such as grocery stores about entering into a contractual agreement to sell purified water through the retail establishments. The taxpayer provides the purification and distribution equipment for use in the retail establishment. The taxpayer retains ownership of the equipment. The retail establishment provides water and sells the purified water to the retail establishment's customers. The retail establishment collects and remits sales tax on the purified water. The taxpayer maintains and services the filtration equipment. After an audit, the Indiana Department of Revenue (department) assessed use tax on the materials used. The taxpayer protested this assessment and a hearing was held. More facts will be provided as necessary.

Sales and Use Tax- Water Filtration and Distribution Systems

Discussion

Retail transactions made in Indiana are subject to sales tax. IC 6-2.5-2-1. A retail transaction is defined generally as the acquiring and subsequent selling of tangible personal property. IC 6-2.5-4-1. Except for certain enumerated services, sales of services are generally not retail transactions and are not subject to sales tax.

Indiana imposes the use tax on “the storage, use or consumption of tangible personal property in Indiana.” IC 6-2.5-3-2. Pursuant to this statute, the department assessed use tax on the taxpayer’s use of water purification and distribution equipment and attachments.

The taxpayer argued that the process at issue entitled the taxpayer to the manufacturing exemption. However, the facts of this situation indicate that the taxpayer is providing a service on property owned by the retail establishment. The retail outlet purchases the water from the local water supplier. The water is run through the taxpayer’s filtration and purification equipment. This equipment acts upon and cleans the water owned by the retail establishment. The retail establishment then sells the purified water for a higher price than the price of the original tap water and collects the sales tax on this sale. In essence the taxpayer cleans water belonging to its customer, the retail outlet.

The taxpayer’s situation is analogous to dry cleaners. Dry cleaning establishments clean clothes belonging to their customers. Pursuant to Sales Tax Information Bulletin #26, April 4, 1983 the dry cleaner provides a nontaxable service and must pay sales tax on its purchases of tangible personal property used in the provision of the service.

As the provider of the service of cleaning water belonging to the retail establishments, the taxpayer is liable for the sales tax or the complementary use tax on tangible personal property used in the provision of the service. 45 IAC 2.2-4-2. There is no indication that the taxpayer paid sales tax at the time of the purchase of the tangible personal property that the taxpayer uses to provide the service. Therefore, the taxpayer properly owes use tax.

Finding

The taxpayer’s protest is denied.